

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ASAMA COLDWATER MANUFACTURING,  
INC.,

Plaintiff-Appellee,

v

DEPARTMENT OF TREASURY,

Defendant-Appellant.

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UNPUBLISHED  
June 8, 2010

No. 290584  
Court of Claims  
LC No. 08-000054-MT

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting plaintiff's motion for summary disposition. For the reasons stated below, we reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is a corporation based in Coldwater. In 1998, plaintiff became eligible for tax credit under the Michigan Economic Growth Authority Act, MCL 207.801 *et seq.*, administered by the Michigan Economic Development Corporation (MEDC) through its Michigan Economic Growth Authority Board (MEGA). Under the Act, a business can receive a credit applicable to its liability under the Single Business Tax Act (SBTA), MCL 208.1 *et seq.*<sup>1</sup> To become eligible, the business and MEGA enter into a contract setting forth the number of new jobs the business must create, and other particulars. Plaintiff and MEGA entered into such a contract. Plaintiff claimed the credit on its 1998 single business tax (SBT) return, but it did not in the years after that apply to MEGA for certification for the credit. Years later, plaintiff sought certification from MEGA for tax years 2000 through 2004, and on January 22, 2007, MEGA issued the certificates, even though the application was not timely under the parties' agreement. In February 2007, plaintiff submitted amended SBT returns for those years and, because plaintiff did not owe any SBT for those years, the returns indicated that the credit amount should be paid to plaintiff.

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<sup>1</sup> Repealed for tax years after 2007 by 2006 PA 325, § 1.

Defendant rejected the request for the tax years 2000, 2001, and 2002, finding that a four-year statute of limitations provided by the revenue act, MCL 205.1 *et seq.*, applied to bar refunds for those years. The refunds for 2003 and 2004 were granted. Plaintiff sought an informal conference to contest defendant's decision. The referee agreed with defendant, and plaintiff appealed to the Court of Claims.

Plaintiff moved for summary disposition under MCR 2.116(C)(9) (failure to state a valid defense). Plaintiff argued that MEGA had waived any right to enforce the contractual deadline; that because only MEGA has the authority to grant the credits, defendant has no authority to enforce the statute of limitations; that the Legislature granted MEGA the sole power to award credits under the Act; that because the State Treasurer or its designee is by statute a member of MEGA, MEGA's approval of the late credit applications served as defendant's waiver of the statute of limitations defense; that the statute of limitations only applies to an "amount paid to the department"; and that defendant's refusal to perform the "ministerial function" of issuing the refunds contravened public policy.

Defendant argued that the statutes clearly limited plaintiff's refund to those tax years for which refunds were already granted. Defendant did not dispute that MEGA approved the credit, but contended that plaintiff was not entitled to a refund for years beyond the statute of limitations. Defendant also noted that the State Treasurer is required by statute to participate in MEGA and to administer the Revenue Act and that the MEGA statutes still require compliance with the SBT in order to have the credit applied to its tax burden.

The court agreed with plaintiff that the timing was controlled by the fact that the parties' contract extended for ten consecutive tax years, beginning with 1998. Because the certificates were issued within the contract's effective period, defendant was required to honor the certificate and grant the refund. Plaintiff had performed as required under the contract, and so defendant had to honor the contract as written. The trial court granted summary disposition in favor of plaintiff.

We review *de novo* a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Statutory interpretation and other questions of law are also considered *de novo* on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008); *Anzaldúa v Band*, 457 Mich 530, 533; 578 NW2d 306 (1998).

We disagree with the Court of Claims' conclusion that contract law applies here. Under the MEGA Act, businesses satisfying their MEGA contracts are "rewarded" not with cash but with a *tax credit* to be applied to their SBT tax liability. Specifically, under the MEGA Act statutes, "eligible" businesses (those that retain or create jobs in manufacturing, mining, wholesale and trade, office operations, or high-tech) seek authorization from MEGA by entering into "a written agreement for a tax credit under section 9" of the Act. MCL 207.803, MCL 207.807, MCL 207.808. In addition, MCL 207.809, provides:

(1) An authorized business is eligible for the credits provided in sections 37c, 37d, and 38g(19) to (24) of the single business tax act, 1975 PA 228, MCL 208.37c, 208.37d, and 208.38g, and sections 407 and 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1407 and 208.1431.

(2) The authority shall issue a certificate each year to an authorized business that states the following:

(a) That the eligible business is an authorized business.

(b) The amount of the tax credit for the designated tax year.

(c) The taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer.

The SBTA is expressly referenced as providing the credits for which businesses authorized under MEGA are eligible. The sections referenced provide, in relevant part:

MCL 208.37c (emphasis added):

(1) For tax years beginning after December 31, 1994 and for a period of time not to exceed 20 years as determined by the Michigan economic growth authority, *a taxpayer that is an authorized business may credit against the tax imposed by section 31 the amount certified each year by the Michigan economic growth authority.*

(2) The credit allowed under subsection (1) for an authorized business for the tax year as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, shall not exceed the payroll of the authorized business attributable to employees who perform qualified new jobs multiplied by the tax rate.

(3) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the return filed under this act on which a credit under this section is claimed.

(4) The certificate required by subsection (3) shall state all of the following:

(a) The taxpayer is an authorized business.

(b) The amount of the credit under this section for the authorized business for the designated tax year.

(c) The taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer.

(d) For a taxpayer that claims a credit allowed under subsection (10), the taxpayer is a distressed business.

*(5) If the credit allowed under subsection (1) exceeds the tax liability of the taxpayer for the tax year, the excess shall be refunded to the taxpayer.*

MCL 208.37d (emphasis added):

(1) For tax years beginning after December 31, 1994, and for a period of time not to exceed 20 years as determined by the Michigan economic growth authority plus any carryforward years allowed under subsection (5), *a taxpayer that is an authorized business may credit against the tax imposed by section 31 an amount equal to the tax liability attributable to authorized business activity.*

(2) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the return filed under this act on which a credit under this section is claimed.

(3) The certificate required by subsection (2) shall state all of the following:

(a) The taxpayer is an authorized business.

(b) The amount of the credit under this section for the authorized business for the designated tax year.

(c) The taxpayer's federal employer identification number or the Michigan treasury number assigned.

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(5) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first.

The other referenced sections of the SBTA do not apply here, and the recently enacted Michigan Business Tax Act does not apply; nonetheless those statutes include similar provisions for applying the tax credit to the taxpayer's tax liability. The MEGA Act has no other provision for an authorized business to be paid directly or to receive a tax credit any way besides as provided in the SBTA. Plaintiff could only apply the credit to its annual SBT liability, and either receive the excess as a refund or carry it forward.

The SBTA further provides that it is administered by the State Treasurer pursuant to the Revenue Act. MCL 208.80(1). That means the procedures for filing returns, paying tax owed, seeking credits and refunds are those set forth in the Revenue Act. In relevant part, those statutes provide:

MCL 205.30(2) (emphasis added):

A taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a. *If a tax return reflects an overpayment or*

*credits in excess of the tax, the declaration of that fact on the return constitutes a claim for refund . . . .*

MCL 205.27a:

(2) . . . The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return . . . .

(3) The running of the statute of limitations is suspended for the following:

(a) The period pending a final determination of tax, including audit, conference, hearing, and litigation of liability for federal income tax or a tax administered by the department and for 1 year after that period.

(b) The period for which the taxpayer and the state treasurer have consented to in writing that the period be extended.

(4) The running of the statute of limitations is suspended only as to those items that were the subject of the audit, conference, hearing, or litigation for federal income tax or a tax administered by the department.

Plaintiff does not argue that any of the suspension provisions apply, nor does the record indicate any reason why they would apply. There does not seem to be any dispute that plaintiff filed returns in the years at issue. Had plaintiff timely applied the credits to its annual returns, the returns would have reflected “credits in excess of the tax,” which by the plain language of MCL 205.30(2) equals a claim for a refund. Then, under MCL 205.27a(2), plaintiff had four years from the due date of each return to seek the refund.

Plaintiff argues that because its net SBT liability meant no taxes were owed, then it could not have been a “taxpayer who paid a tax” and the four-year limit does not apply. This argument is without merit. The “taxpayer who paid a tax” sentence does not need to apply to plaintiff; the *next* sentence imposes the four-year limit. As a business authorized by MEGA, plaintiff must have been subject to the SBTA. Even if the tax it owed was zero, the credits would be “in excess of the tax.”

Finally, we find that plaintiff’s public policy arguments, even if appropriate, also fail. Plaintiff could easily have had its refund *had it simply submitted the credit on time*.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ Peter D. O’Connell  
/s/ Michael J. Talbot